

1 The parties to the above-entitled action jointly submit this JOINT CASE
2 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All
3 Judges of the Northern District of California, revised November 1, 2014 and Civil Local Rule
4 16-9.

5 **1. Jurisdiction & Service**

6 The jurisdiction of this Court over the subject matter of this action is predicated on 28
7 U.S.C. sections 1331 and 1367. No issues exist regarding in personam jurisdiction or venue. All
8 Defendants have been timely served.

9 **2. Facts**

10 **A. Plaintiff's Statement of Facts**

11 Plaintiff worked as a Senior Finance Manager for ORACLE in the company's North
12 America SaaS/Cloud Revenue division. As an experienced CPA, auditor, and finance
13 professional, Plaintiff was informed and aware of the controls and directives promulgated by
14 Sarbanes-Oxley and Generally Accepted Accounting Principles ("GAAP"). During the course
15 of her employment, Plaintiff's superiors instructed her to add millions of dollars in accruals to
16 financial reports without concrete or foreseeable billing to support those numbers. Plaintiff
17 repeatedly advised that the practice was improper and told her supervisor she would blow the
18 whistle if she was ordered to continue the practice. Despite Plaintiff's objections, her superiors
19 continued to add accruals on their own. Plaintiff continued to resist and warn her superiors of
20 the impropriety of the practice, as she knew that the data would end up in reports and releases
21 relied upon by the investing public. On October 15, 2015, within weeks of her resistance and
22 warnings regarding the company's improprieties, the company terminated Plaintiff.

23 Principal factual issues in dispute include:

- 24 1) Whether Defendant knowingly circumvented internal controls with respect to its
25 Cloud business;
- 26 2) Whether Defendant made material misrepresentations to the investing public about
27 its Cloud business;
- 28

- 1 3) Whether Defendant violated Generally Accepted Accounting Principles (GAAP)
- 2 with respect to its Cloud business;
- 3 4) Whether Plaintiff's complaints about, resistance to and refusal to engage in
- 4 reasonably suspected violations of the Sarbanes-Oxley Act were a contributing
- 5 factor in her termination;
- 6 5) Whether Defendant's stated reasons for termination were pretextual.

7 **B. Defendant's Statement of Facts**

8 On September 2, 2014, Plaintiff was hired by Oracle as a Senior Finance Manager, NA
9 Saas (Software as a Service). In her role, Plaintiff was responsible for forecasting Cloud Saas
10 revenue for North America. Plaintiff made repeated, serious revenue forecasting errors for the
11 first quarter of fiscal 2016 (which covered June 1, 2015 through August 31, 2015), and she
12 refused to accept responsibility for them. These errors were caused by her lack of
13 comprehensive review, her failure to supervise her direct reports, her failure to cross reference
14 facts and assumptions with other team members and business contacts, and her failure to take
15 necessary action on information being provided. These were fundamental requirements of Ms.
16 Blackburn's position as a Senior Finance Manager, and she failed to meet them. As a result of
17 these errors, Plaintiff's managers lost confidence in her ability to effectively perform her job
18 and generate accurate forecasts that Oracle could rely on. Defendant terminated Plaintiff's at-
19 will employment on October 15, 2015.

20 Plaintiff never engaged in any protected activity under any of the theories alleged in her
21 Complaint. Plaintiff never stated that she would "blow the whistle" or made any statements
22 that any accruals violated applicable securities laws or regulations or amounted to shareholder
23 fraud. Contrary to her allegation that there was "no concrete or foreseeable billing" to support
24 the accruals, Plaintiff was well aware of the support for the accruals and even prepared and
25 submitted the documentation for the first set of accruals that were made. As to the second set
26 of accruals submitted by her former manager, Plaintiff reviewed the supporting documentation
27 and stated that there was "sufficient support to track actuals" (referring to actual revenue
28 coming in).

1 Finally, Plaintiff inquired about the possibility of re-accruals because she was concerned
 2 that the potential reversal of accruals from the prior quarter would undermine her forecast for
 3 the following quarter. Moreover, at the time Plaintiff inquired about a possible re-accrual,
 4 Defendant had already decided to terminate her employment. Therefore, any alleged
 5 objections to possible re-accruals (which she never made) could not have been a contributing
 6 factor in Defendant's termination decision.

7 Principal factual issues in dispute:

- 8 1. Whether Plaintiff's termination resulted from her errors in forecasting.
- 9 2. Whether Plaintiff's termination was a result of her failure to take responsibility
 10 for her forecasting errors.
- 11 3. Whether Plaintiff ever complained to anyone at Oracle that the accruals or
 12 alleged reaccruals violated any law, rule, or regulation enumerated in section 1514A
 13 of the Sarbanes-Oxley Act.

14 **3. Legal Issues**

15 Principal legal issues in dispute include:

- 16 1) Whether Defendant retaliated against Plaintiff for engaging in protected activity
 17 under the Sarbanes-Oxley Act, 18 U.S.C. §1514A *et seq.*;
- 18 2) Whether Plaintiff is a covered "whistleblower" under the anti-retaliation provisions
 19 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C.
 20 §78u-6 *et seq.*;
- 21 3) Whether Defendant retaliated against Plaintiff for engaging in protected activity
 22 under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C.
 23 §78u-6 *et seq.*;
- 24 4) Whether Plaintiff retaliated against Plaintiff in response to protected activity, in
 25 violation of California Labor Code section 1102.5(a)-(c); and
- 26 5) Whether Defendant's termination of Plaintiff constitutes wrongful termination in
 27 violation of public policy.

28 **4. Motions**

1 Defendant filed a motion to relate cases on July 18, 2016. The unopposed motion was
2 granted on July 22, 2016. The parties anticipate that the scope of discovery in this case will
3 necessitate a protective order. Defendant anticipates the filing of a motion for summary
4 judgment upon conclusion of discovery.

5 **5. Amendment of Pleadings**

6 Plaintiff does not anticipate any amendment of pleadings at this time. Although at this
7 time Defendant does not expect to amend its Answer, Defendant reserves the right to assert
8 additional defenses in the event discovery indicates it would be appropriate.

9 **6. Evidence Preservation**

10 Plaintiff has retained all evidence related to this matter in her possession, custody or
11 control. Defendant certifies that it has reviewed the Guidelines Relating to the Discovery of
12 Electronically Stored Information (“ESI”) and confirms that the parties have met and conferred
13 pursuant to Rule 26(f) to discuss preservation of ESI and other evidence relevant to the issues.
14 Defendant confirms that it has taken appropriate evidence preservation measures.

15 **7. Disclosures**

16 The parties anticipate that their Initial Disclosures pursuant to Federal Rule of Civil
17 Procedure 26(f) will be completed by no later than August 31, 2016.

18 **8. Discovery**

19 A. Plaintiff: On August 11, 2016, Plaintiff served discovery requests on Defendant
20 Oracle America, Inc., including Special Interrogatories-Set One and Request for Production of
21 Documents-Set One. Plaintiff intends to take the depositions of individual employees of
22 Defendant, as well as the person most knowledgeable as to the policies and practices of
23 Defendant Oracle America, Inc., pursuant to Federal Rule of Civil Procedure 30(b)(6).

24 B. Defendant: Defendant has not yet served written discovery on Plaintiff. Defendant
25 plans to take the deposition of Plaintiff. The parties will attempt to enter into a stipulated e-
26 discovery order. The parties also anticipate the filing of a Protective Order.

1 **9. Class Actions**

2 This case is not a class action.

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4 **10. Related Cases**

5 On July 22, 2016, this Court granted Defendant's unopposed Motion to Relate this case
6 to Case Number 16-cv-02966-EMC, entitled *Klarfeld v. Oracle Corporation*. In addition, this
7 Court held that case Number 16-cv-3583-JSC, entitled *Tomassini v. Oracle, et al.* should be
8 related (Docket Document Number 16). According to the Court's docket, both of those cases
9 have been voluntarily dismissed without prejudice.

10 **11. Relief**

11 Plaintiff seeks special and general damages according to proof, punitive damages, for
12 reinstatement or front pay in lieu thereof according to proof, for double back pay for Plaintiff's
13 second cause of action, for a permanent injunction prohibiting Defendant from retaliating
14 against employees who raise concerns or complaints about (or refuse to engage in) conduct
15 they reasonably believe to be unlawful or fraudulent under the Sarbanes-Oxley Act or the
16 Dodd-Frank Wall Street Reform and Consumer Protection Act, for costs of suit incurred
17 herein, for attorneys' fees on causes of action where fees are available by law, for prejudgment
18 and post-judgment interest as available by law; and for such other and further relief as this
19 Court may deem just and proper.

20 Defendant states that it treated Plaintiff lawfully at all times and denies that Plaintiff is
21 entitled to any relief whatsoever.

1 **12. Settlement and ADR**

2 The parties have agreed to complete private mediation by October 31, 2016.

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4 **13. Consent to Magistrate Judge for All Purposes**

5 Whether all parties will consent to have a magistrate judge conduct all further
6 proceedings including trial and entry of judgment. ____ Yes x No

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9 **14. Other References**

10 The parties do not believe that any references are appropriate at this time.

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13 **15. Narrowing of Issues**

14 The parties do not believe there are any issues that can be narrowed at this time.

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16 **16. Expedited Trial Procedure**

17 The parties agree that this case cannot be handled on an expedited basis with streamlined
18 procedures.

19
20 **17. Scheduling**

21 The parties propose the following dates:

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23 Cut-off for non-expert Discovery: 120 days before trial

24 Designation of Experts: 120 days before trial

25 Cut-off for Expert Discovery: 30 days before trial

26 Last day to file Dispositive Motions: 90 days before trial

27 Hearing of Dispositive Motions: 45 days before trial

28 Pre-trial Hearing: 7-10 days before trial

1 Trial Date:

To be determined

2
3 **18. Trial**

4 Plaintiff requests a jury trial. The expected length of trial by is 10-15 days. Defendant
5 does not concede that a jury trial is available for Plaintiff's Dodd-Frank cause of action.

6 **19. Disclosure of Non-party Interested Entities or Persons**

7 Plaintiff is unaware at the time of the filing of this statement whether any persons, firms,
8 corporations, or other entities have either a financial interest in the subject matter or controversy
9 or in a party to the proceeding or any other kind of interest that could substantially affect the
10 outcome of this proceeding. Plaintiff filed a "Certification of Interested Entities" as required by
11 Civil Local Rule 3-16 and Federal Rule of Civil Procedure 7.1 on August 11, 2016 (Docket
12 Document Number 21).

13 Defendant certifies that it has filed the Certification of Interested Entities or Persons
14 required by Civil Local Rule 3-15. In addition, Defendant restates its certification below:
15 Pursuant to Civil L.R. 3-15, the undersigned certifies that the following listed persons,
16 associations of persons, firms, partnerships, corporations (including parent corporations) or other
17 entities (i) have a financial interest in the subject matter in controversy or in a party to the
18 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
19 substantially affected by the outcome of this proceeding:

- 20 1. Oracle Corporation
21 2. Oracle America, Inc.

22 **20. Professional Conduct**

23 Counsel for Plaintiff and Defendant have reviewed the Guidelines for Professional
24 Conduct for the Northern District of California.

25 **21. Other**

26 The parties do not believe that there are any other matters that may facilitate the just,
27 speedy, and inexpensive disposition of this matter at this time.

1
2 Dated: August 24, 2016

VELTON ZEGELMAN P.C.

3 

4 Daniel Velton, Esq.

5 Attorneys for Plaintiff SVETLANA

6 BLACKBURN

7
8 ORRICK, SUTCLIFFE & HERRINGTON

9 Dated: August 24, 2016

/s/ Michael Delikat

10 Kenneth Herzinger

11 Michael Delikat

12 Renee B. Phillips

13 Erin M. Connell

14 Counsel for Defendant ORACLE AMERICA,
15 INC.
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

UNITED STATES JUDGE